IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA
HOLDEN AT ABUJA

ON WEDNESDAY, 15TH DAY OF JULY, 2020

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/CV/2311/2017

MOTION NO. M/7993/2019

BETWEEN

JOSHUA ELAIGWU MOSES
[Carrying on business under the style "Joshua Elaigwu Moses & Co.] } **PLAINTIFF/RESPONDENT**

AND

GUARANTY TRUST BANK PLC. --- DEFENDANT/APPLICANT

RULING

The plaintiff instituted this suit on 29/6/2017. The defendant filed its statement of defence on 21/2/2018. The plaintiff closed his case on 16/4/2019 after the evidence of PW2. The case was adjourned for defence. By *a Motion No. M/7993/2019* filed on 16/7/2019, the defendant prays the Court for the following orders:

1. An order of Court granting leave to the defendant/applicant to amend its statement of defence in line with the highlighted and underlined

paragraphs of the proposed Amended Statement of Defence attached herein as 'Exhibit A' in paragraph 3[k] of the affidavit in support of this motion.

2. An order of Court granting leave to the defendant/applicant to file fresh witness Statement on Oath and list of documents to be relied upon by the defendant/applicant during the hearing of this suit.

3. And for such further order[s] as this Honourable Court may deem fit to make in the circumstances.

In support of the application, HabilaDanladi, a litigation secretary in the Law Firm of Oli& Partners, deposed to an affidavit of 5 paragraphs; attached therewith is Exhibit A. C. P. OliEsq. filed a written address with the motion. In opposition, the plaintiff filed a 16-paragraph counter affidavit on 4/9/2019 and his written address. On 26/11/2019, ChukwuemelieOfoma, a litigation secretary in the Law Firm of Oli& Partners, deposed to a 4-paragraph further affidavit with the reply on points of law of C. P. OliEsq. The application was heard on 15/6/2020.

In the affidavit in support of the application, HabilaDanladi stated that Charles AniebonamEsq. informed him of the following facts which he verily believed:

i. At the time the defendant instructed Oli& Partners to represent it in this suit, the officers of the defendant involved in the supposed cause of

action that gave rise to this suit were unavailable to provide enough facts for the proper defence of the suit due to *"their leaves and tight schedule of work."*

ii. Also, due to the bureaucratic setting of the defendant, it took sometime before counsel to the defendant could be properly availed all the necessary information needed to put up a reasonable defence for the defendant.

iii. It was in this situation of dearth of information that trial commenced on 21/2/2018.

iv. There were also clerical mistakes and errors of facts in the statement of defence sought to be amended.

v. The amendment sought is material and necessary. The essence of the amendment is to present to the Court substantial evidence of the dispute between the parties to aid it in determining the real questions and issues in controversy.

In his counter affidavit, the plaintiff stated that:

i. The reasons given for the application are false as the duration of leave usually granted to bank's staff is at most 30 days for annual leave and 7 days for casual leave.

ii. After the filing of the statement of defence, the defendant did not take any step to amend its pleadings but waited for him to close his case.

iii. When the proposed amended statement of defence is compared with the statement of defence, no error of facts or clerical mistake is disclosed. What is disclosed is a deliberate ploy to deny a fact that has already been admitted in the statement of claim.

iv. In paragraphs 8, 9 & 10 of the counter affidavit, he stated some of the paragraphs of the proposed amended statement of defence where the defendant denied what it had admitted in the statement of defence.

v. For example, in the statement of defence, the defendant stated that the excess charges [which he complained of in paragraphs 20-24 of his statement of claim] were as a result of *"system error"* but it turned around in the proposed amended statement of defence to change the reason it gave for excess charges to *"CBN's policy."*

vi. Having closed his case, he will not have the opportunity to file a reply or further witness statement on oath and lead evidence to the proposed amendments.

vii. The amendment brought after he had closed his case is an after-thought with intent to outwit, outsmart and overreach him; and the amendment is brought *mala fide*. The defendant has not disclosed any strong reason for the grant of the application.

In the further affidavit, it is deposed that the plaintiff [claimant] has the right of reply to the amendment sought and the opportunity to re-open his case.

Learned counsel for the defendant/applicant posited that a party is entitled to amend his pleadings as a matter of course to enable the trial court decide the real issues in controversy between the parties. The application should be granted unless the applicant is acting *mala fide*. He relied on Order 25 rules [1], [2] & [3] of the Rules of Court, 2018; and the cases of**Ita v. Dazie [2013] 9 NWLR [Pt. 1359] 248,Oforishe v. Nigerian Gas Company Ltd. [2017] LPELR-42766 [SC]** among others to support his submission that the Court has power to grant theamendment sought to enable it decide the real issues in controversy between the parties.C. P. OliEsq. submitted that the plaintiff will not be overreached by the amendment and no injustice will be caused to the plaintiff if the Court grants the application as he has a right of reply and he can cross examine on the proposed amended paragraphs.

The standpoint of the plaintiff/respondent is thatthe grant or refusal of an application for amendment is purely within the discretion of the court. The circumstances where an application for amendment will be refused include: [i] where granting the amendment will lead to injustice to the respondent; [ii] where the applicant is acting *malafide*; [iii] if the purpose of the amendment is to deny a fact which the applicant had previously admitted; [iv] where the applicant fails to establish to the satisfaction of the court that the respondent will not be prejudiced; and [v] where the amendment will amount to overreaching the respondent. He referred to **Ita v. Dazie [supra],Akaninwo v. Nsirim [2008] All FWLR [Pt. 410] 663,** among others.

Joshua Elaigwu Moses Esq. submitted that the amendment, if granted, will lead to injustice to him because the applicant *"has got the better side of its case from the oral and documentary evidence of the claimant which will amount to overreaching the claimant/respondent. Not only that … the purpose of the amendment is not for anything other than to deny a fact which they have previously admitted. Furthermore, the claimant will not have the opportunity to file reply and further witness statement on oath and lead evidence on it again."*

It was further submitted that the purpose of the amendment is to deny a fact which the applicant has previously admitted and in **Akaninwo v. Nsirim [supra]**, it was held that a party cannot be allowed to admit a fact and then deny it through amendment. He also referred to **Daramola v. A. G. Ondo State [2000] FWLR [Pt. 6] 997** and **A. G. Lagos State v. Purification Tech. [Nig.] Ltd. [2003] 16 NWLR [Pt. 845] 1.** The plaintiff also argued that the amendment, if granted, will prejudice and overreach him. The amendment is *"not a case of clerical mistakes or error of fact as claimed by the applicant but a deliberate ploy to tactically avoid the facts already admitted in the claimant's statements of claim."* If it is error of fact, *"the defendant must either sail joyfully with it in the boat of victory or sink sorrowfully with it in the boat of defeat."* He referred to **A.G. Enugu State v. Avop Plc. [1995] 6 NWLR [Pt. 399] 90**.

In the reply on points of law, Mr. C. P. Oli argued that the amendment is to enable the defendant *"fully and comprehensively"* present its side of the story to the Court; he cited**Khalifa v. Onotu&Anor. [2016] LPELR-41163 [CA].**He

stressed that the amendment sought will not render the plaintiff helpless as there is no law that prevents him from re-opening his case and filing a reply to the amendment if the amendment will necessitate the filing of a reply.

Now, the position of the law is that the court has the discretionary power to grant an application for amendment of pleadings. However, an amendment of pleadings will not be granted where: [i] it is intended to overreach the respondent; or [ii] if it will entail injustice or surprise or embarrassment to the respondent; or [iii] if the applicant is acting *mala fide*; or [iv] where the amendment will cause injury to the respondent that cannot be compensated by costs or otherwise. See the cases of **C. C. Odunukwe v. Moses TaiwoAdebanjo [1999] 4 NWLR [Pt. 598] 317;** and **Nigerian Dynamic Ltd. v. Emmanuel S. Dumbai [2002] 15 NWLR [Pt. 789] 139.**

In **Oforishe v. Nigerian Gas Co. Ltd. [supra],** it was held that the purpose of amending pleadings is to prevent the Court from giving judgment in ignorance of facts that should be known before rights are finally decided. Put in another way, amendments to pleadings are ultimately to enable the Court decide the real issues in controversy between the parties. In**Akinsanya v. Ajeri&Ors. [1997] LPELR-6327 [CA],***His Lordship, Pats-Acholonu, JCA [as he then was, now of blessed memory]* held:

> *"In Cropper v. Smith 1884 28 CH.D 710 at 711 Bowen LJ., said as follows, in respect of rules of amendment: "It is a well established principle that the object of the Court is to decide the rights of the parties, and not punish them for*

mistakes they make in the conduct of the cases by deciding otherwise than in accordance with their rights...I know of no kind of error or mistake which if not fraudulent or intended to over reach, the Court ought not to correct, if it can be done without injustice to the other party. … It seems to me that as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is as much a matter of right on his part to have it corrected if it can be done without injustice, as anything else in the case is a matter of right." …"

In the instant case, part of the plaintiff's grounds for opposing the grant of the application is that the defendant is changing its pleadingsthat the excess charges [which he complained of] were as a result of *"system error"*to now aver that the excess charges were as a result of the policy of CBN [Central Bank of Nigeria]. In my humble view, this change of averment is within the ambit of amendment of pleadings. After all, amendment means to improve or to change for the better by removing defects or faults. See **New Nigerian Bank Plc. v. Denclag Ltd. &Anor. [2004] LPELR-5942 [CA]** and **UBN Plc. v. Lawal [2011] LPELR-8879 [CA].**In**Owodunni v. Registered Trustees of CCC [2000] LPELR-2852 [SC],**it was held that the word amendment includes*"re-writing"* the whole document and *"substituting the new for the old"*.

The plaintiff also argued that the amendment, if granted, will overreach and prejudice him because he will not have the opportunity to file a reply and lead evidence in response to the amendment. With due respect, this argument

is not correct. As rightly stated by C. P. OliEsq., there is no law that prevents the plaintiff from filing a reply and adducing further evidence in responseto the facts sought to be introduced by the amendment. That being the case, I take the view that the amendment, if granted, will not prejudice or overreach the plaintiff. Rather, the amendment will enable the Court decide the real issues in controversy between the parties.

The other point canvassed by the plaintiff is that the purpose of the proposed amendment is to deny a fact which the defendant had admitted in its original statement of defence. He submitted that this cannot be allowed. I have read the cases of **Akaninwo v. Nsirim [supra]**, **Daramola v. A. G. Ondo State [supra]**and **A. G. Lagos State v. Purification Tech. [Nig.] Ltd. [supra]** relied upon by the plaintiff for this submission.

The case of **Daramola v. A. G. Ondo State**and the case of**A. G. Lagos State v. Purification Tech. [Nig.] Ltd.**did not deal with amendment of pleadings. Thus, these cases are not helpful to the issue under consideration.

In the case of**Akaninwo v. Nsirim [supra];** also reported in **[2008] 9 NWLR [Pt. 1093] 439,**the defendants/appellants applied for leave of the trial court to amend their statement of defenceafter the second witness for the plaintiffs/respondents had testified. The trial court refused the application. The Court of Appeal dismissed the defendants/appellants' appeal and affirmed the decision of the trial court. The further appeal to the Supreme

Court was allowed.*His Lordship, Mahmud Mohammed, JSC [as he then was]*, who read the Leading Judgment held at ***pages 462-463, C-A***:

> *"Some of the reasons given by the learned trial Judge and endorsed by the court below for refusing the defendants/appellants' application to amend their statement of defence include that the amendments which affected 10 out of the 23 paragraphs of the statement of defence, amounted to a complete substitution of a new statement of defence. Not only that, the learned trial Judge also found that the amendments would have the effect of allowing the defendants/appellants to withdraw or abandon paragraphs in which part of the claim of the plaintiffs/respondents have been admitted, thereby forcing the plaintiffs/respondents to have to file a reply to the new statement of defence with the necessity of having to recall the two witnesses who had already testified. The question is, are these reasons given for refusing the application for amendment justified, most especially taking into consideration of the clear finding of the learned trial Judge at page 160 of the record of this appeal? This was what the learned trial Judge said:*
>
> > *"The statement of defence has 23 paragraphs out of which ten [10] are affected by the proposed amendment. It is interesting to note that the ten paragraphs being amended constitute the main defence of the defendants' case."*
>
> *Indeed if the amendments being sought by the defendants/appellants in their application constitute their main defence to the case against them by the*

plaintiffs/respondents, that finding alone was enough to have put the trial court on guard on the need to adhere to the guiding principles in granting or refusing amendments of pleadings. With this finding, both the trial court and the court below ought in my opinion, to have found that the amendment being sought was necessary for the purpose of determining the real questions in controversy between the parties and therefore should have been granted in order to prevent manifest injustice to the defendants/appellants by allowing them to plead their main defence to the case against them. …"

His Lordship further held at ***page 465, C-E*** that:

"… the fact that the defendants' application was made after the cross examination of the second witness to the plaintiff was not enough reason to refuse the application because such application by a defendant may be granted even after the close of the case of the plaintiffs. …"

His Lordship allowed the appeal and granted the defendants/appellants' application to amend their statement of defence. The case was remitted to the trial court for hearing by another Judge on the pleadings of the parties as amended. My Lords, *Oguntade, JSC, Tabai, JSC and Aderemi, JSC* adopted the decision in the Leading Judgment. However, *His Lordship, Tobi, JSC* gave a dissenting opinion. At ***page 479, G-H,*** His Lordship said:

"A litigant should not be allowed to speak at the same time or the same moment from the two sides of his mouth. … He cannot make a case in his

pleadings and suddenly change or reverse position to make a different case. A party cannot by his complete state of mind make an admission and later decide to change it by amendment. While a party can do so in very clear instance of mistake or fraudulent misrepresentation by the adverse party, that is not the situation here."

It is obvious that the plaintiff relied on the reasoning and dissenting opinion of *His Lordship, Tobi, JSC.* The position of the law is that this Court is bound to follow the Leading Judgment and not the dissenting opinion. I reiterate my view that so long as the plaintiff has the opportunity to file a reply and adduce evidence in response to the amendments sought, he will not be prejudiced by the grant of the application and he will not suffer injustice as a result of the grant of the application.

In conclusion, I grant the application. It is ordered as follows:

1. Leave is granted to the defendant/ applicant to amend its statement of defence in line with the highlighted and underlined paragraphs of the proposed amended statement of defence attached to the affidavit in support of the application as Exhibit A.

2. Leave is further granted to the defendant/applicant to file fresh witness statement on oath and fresh list of documents to be relied upon during the hearing of this suit.

3. The defendant shall file and serve it amended statement of defence, fresh witness statement on oath and fresh list of documents to be relied upon during the hearing of this suit within 10 days from today.

4. The plaintiff is at liberty to make consequential amendment to his statement of claim within 10 days from the date of service of the defendant's amended statement of defence and to adduce further evidence in support thereof, if he so desires.

_____

HON. JUSTICE S. C. ORIJI
[JUDGE]

Appearance of counsel:

1. The claimant/respondent appears in person.
2. Olufemi M. BalogunEsq. for the defendant/applicant; holding the brief of Charles AniebonamEsq.